

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: BPS DIRECT, LLC, AND
CABELA'S, LLC, WIRETAPPING**

: **MDL 3074**
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: **E.D.Pa. ACTION NOS.:**
: **23-md-3074**
: **22-cv-4709**
: **23-cv-2282**
: **23-cv-2287**
: **23-cv-2293**
: **23-cv-2294**
: **23-cv-2295**
: **23-cv-2306**
: **23-cv-2338**

ORDER

AND NOW, this 12th day of July 2023, upon considering the parties' status Report (ECF 42) responsive to our June 20, 2023 Order (ECF 4), and having today appointed lead, co-lead, liaison, and Steering Committee counsel upon consent, it is **ORDERED**:

1. Counsel and all parties are governed by this Court's Policies and Procedures at www.paed.uscourts.gov;
2. We will hold an **INITIAL PRETRIAL CONFERENCE** on **July 25, 2023 at 1:30 P.M.**, the time and date requested by the parties in their status Report (ECF 42 at 4), in Courtroom 6B, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania;
3. Lead counsel shall engage in early, ongoing and meaningful discovery planning proportional to the needs of your case including by preparing the information necessary for the Rule 26(f) Report for our review at the Initial Pretrial Conference including the fulsome stipulation of undisputed facts for purposes of discovery, disclosing each Defendant's insurer's name and coverage terms, and addressing the need for a F.R.E. 502 Order;
4. The parties shall exchange the required initial disclosures under Fed. R. Civ. P.

26(a) and shall produce copies of the identified documents, on or before **July 31, 2023**;

5. Plaintiffs are granted leave to file a Consolidated Complaint by no later than **August 14, 2023**.

6. Defendant may file an Answer due by **August 28, 2023**, or a responsive Motion compliant with our Policies and supporting Memorandum not exceeding forty pages¹ filed by **September 5, 2023**;

a. Plaintiffs are granted leave to file an Opposition to a Motion to dismiss not exceeding forty pages filed by **September 22, 2023**, and;

b. Defendants may file a Reply not exceeding twenty pages by no later than **September 29, 2023**;

7. Written discovery will begin upon the entry of our first pretrial Order on or around July 25, 2023 requiring lead counsel to now begin meaningful discovery planning and the parties shall prepare to exchange written discovery requests to each other and third parties including focusing this initial discovery on information relevant to the most important issues available from the most easily accessible sources;

8. After consulting with all parties, Plaintiffs' counsel shall complete and file with the Clerk the required Report of the Rule 26(f) Meeting incorporating, at a minimum, all the information required in our Form Rule 26(f) Report (found on the Court website with our Policies and Procedures) on or before **Friday, July 21, 2023**, and include:

¹ We appreciate counsel in most cases would like more ink. We find the extra pages unnecessary and often counterproductive. Counsel need not in a Rule 12 motion, for example, repeat the allegations, procedural history, or standard of review unless different than we apply in every other case. We appreciate there are different statutory schemes as briefly addressed in our June 20, 2023 Order at ECF 4, n. 4. We allow double the amount of briefing to address these differences.

a. The identity and proposed treatment of potential tag-along or related case designations for cases raising identical or similar claims against these two Defendants or other retailers. *See e.g., Vonbergen v. Bloomingdales.com, LLC*, No. 22-4724 (E.D.Pa.) and *Munday v. Avis Budget Group, Inc.*, No. 22-4807 (E.D.Pa.); and,

b. A proposed schedule for class certification and summary judgment mindful we expect to address final dispositive motions in Fall 2024.

9. The parties' lead and co-lead counsel are required to appear at the conference. While all counsel are invited to our courtroom, other counsel not designated as lead or co-lead or liaison counsel and admitted in this District may arrange a conference line to listen (but not participate) and advise our Chambers of the logistics for this one conference line by email by no later than **Noon EST on July 24, 2023**; and,

10. Lead and co-lead counsel shall be prepared during our July 25, 2023 Conference to specifically identify settlement initiatives and conferences to date, status of those discussions which shall begin forthwith in good faith if not begun, and potential qualified private mediators for our Rule 53 appointment at the conference.



KEARNEY, J.